

APPEAL BOARD'S REPORT**A****Chong Co Sdn Bhd v
Majlis Perbandaran Pulau Pinang**

APPEAL BOARD (PULAU PINANG) — APPEAL NO LR/PP/5 OF 1998
JEFFREY TAN J, SALEENA YAHYA ISA AND ONG HEAN TEE
13 NOVEMBER 1999

B

Administrative Law — Exercise of administrative powers — Local authority — Application for planning permission — Failure of local authority to give decision — Whether indecision tantamount to rejecting applicant's application for planning permission — Whether indecision is appealable matter within Town and Country Planning Act 1976 s 23(1)

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Local Government — Town planning — Application for planning permission — Whether permission must be granted if application does not contravene development plan — Whether local authority may give directions as to height of proposed building — Failure of local authority to give decision, whether tantamount to rejecting application — Whether indecision is appealable — Town and Country Planning Act 1976 s 23(1)

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Words and Phrases — 'Decision' — Town and Country Planning Act 1976 s 23

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In July 1996, the appellant submitted an application for planning permission to erect a 12-storey building. The appellant fulfilled all conditions and requirements imposed by the respondent. In January 1997, the appellant was informed to consider the reduction of the height of the proposed building to five storey. The appellant informed the respondent of their intention to proceed with the erection of the proposed 12-storey. The respondent did not give any reply as to the status of the appellant's application. The appellant appealed under s 23 of the Town and Country Planning Act 1976 ('the Act') against the decision of the respondent, contending that the conduct of the respondent in refusing to make a decision and reply to the appellant tantamount to rejecting the appellant's application for planning permission. The respondent raised a preliminary objection that there was no decision on the application for planning permission and there was therefore no appealable matter within the meaning of s 23(1) of the Act. On the appeal proper which was received in the circumstances as an appeal against refusal of planning permission, the appellant contended that the application must be granted since they had complied with all guidelines prevailing at the time of submission of the application. The respondent submitted that a proposed development that complied with the development plans will not necessarily be approved. The local planning authority must take current conditions and policies into account. Because of the height of the building, the respondent recommended no approval for the plan submitted.

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A **Held**, dismissing the appeal:

- B** (1) The provisions of s 23(2) cannot be circumvented by directions under s 21 or by indecision. A local planning authority must decide on an application for planning permission. It is the intention of the Act that there is a speedy disposal of applications for planning permission and a right of appeal to aggrieved applicants. The application of the words in the Act must produce that result and that result would be produced only by construing the word 'decision' not only in the literal sense (grant or refusal of planning permission) but also in the wider sense (no decision on the application), so that a local planning authority could not refuse to decide on an application, and also so that an applicant who would be aggrieved by no decision could appeal to the Appeal Board. Therefore, the respondent's preliminary objection founded on failure to comply with the law should be rejected (see pp 137E, 138C-F).
- C**
- D** (2) The Act does not say that planning permission will be granted if the development in respect of which permission is applied for would not contravene any provision of the development plan. Planning permission could be refused even if the development in respect of which permission is applied for would not contravene any provision of the development plan. And in the instant case, even if the development in respect of which permission was applied would not contravene any provision of the 1987 structure plan, planning permission could be validly refused on account of the provisions that the respondent thinks are likely to be made in any development under preparation or to be prepared, or the proposals relating to those proposals. The development plan was definitely not the only matter to be taken into consideration (see pp 141G-H, 142D-E).
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- G** (3) By virtue of s 21(3)(c) of the Act, the local planning authority in an application for planning permission to erect a building may give directions on the height of the proposed building (see p 143H).

[Bahasa Malaysia summary]

- H** Pada bulan Julai 1996, perayu telah mengemukakan satu permohonan untuk kebenaran perancangan untuk membina satu bangunan 12-tingkat. Payeru telah memenuhi semua syarat-syarat dan keperluan yang dikenakan oleh responden. Pada bulan Januari 1997, perayu telah diberitahu agar mempertimbangkan pengurangan ketinggian bangunan yang dicadangkan tersebut kepada lima tingkat. Payeru telah memberitahu responden tentang tujuan mereka untuk meneruskan cadangan pembinaan bangunan 12-tingkat tersebut. Responden tidak memberikan sebarang jawapan berhubung kedudukan permohonan perayu tersebut. Payeru telah membuat rayuan di bawah s 23 Akta Perancangan Bandar dan Luar Bandar 1976 ('Akta
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tersebut') terhadap keputusan responden, dengan menegaskan bahawa perbuatan responden yang enggan untuk memberikan suatu keputusan dan jawapan kepada perayu adalah sama seperti menolak permohonan perayu untuk kebenaran perancangan tersebut. Responden telah menimbulkan satu bantahan awal bahawa tiada terdapat keputusan terhadap permohonan untuk kebenaran perancangan tersebut dan oleh demikian tiada perkara yang boleh dirayukan di dalam maksud s 23(1) Akta tersebut. Dalam rayuan sebenar yang diterima di dalam keadaan sebagai satu rayuan terhadap penolakan kebenaran perancangan, perayu menegaskan bahawa permohonan tersebut patut diberikan memandangkan mereka telah memenuhi semua garis panduan yang diamalkan pada masa permohonan tersebut dikemukakan. Responden telah menghujahkan bahawa suatu cadangan pembangunan yang memenuhi rancangan pembangunan tidak semestinya diluluskan. Badan perancang tempatan perlu mengambil kira keadaan-keadaan dan polisi-polisi semasa. Oleh kerana ketinggian bangunan tersebut, responden telah mencadangkan tiada kebenaran untuk rancangan tersebut dikemukakan.

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Diputuskan, menolak rayuan tersebut:

- (1) Peruntukan s 23(2) tidak boleh dipintas oleh arahan di bawah s 21 atau oleh keputusan yang tidak dibuat. Suatu badan perancang tempatan perlu membuat keputusan pada satu permohonan kebenaran perancangan. Adalah tujuan Akta tersebut bagi mewujudkan satu penyelesaian yang cepat untuk permohonan-permohonan untuk kebenaran perancangan dan hak untuk merayu kepada pemohon-pemohon yang terkilan. Pemakaian perkataan-perkataan di dalam Akta tersebut perlu menghasilkan kesan tersebut dan kesan tersebut akan hanya dapat dihasilkan dengan mentafsirkan perkataan 'keputusan' bukan di dalam maksud literal sahaja (kebenaran atau penolakan kebenaran perancangan) tetapi juga di dalam maksud yang lebih luas (tiada keputusan tentang permohonan tersebut), supaya suatu badan perancang tempatan tidak boleh memberikan keputusan terhadap suatu permohonan, dan juga supaya seorang pemohon yang tidak terkilan oleh keputusan yang tidak dibuat boleh membuat rayuan kepada Lembaga Rayuan. Oleh demikian, bantahan awal responden yang berdasarkan kepada kegagalan untuk menuruti undang-undang hendaklah ditolak (lihat ms 137E, 138C-F).
- (2) Akta tersebut tidak menyebutkan bahawa kebenaran perancangan tersebut akan diberikan jika pembangunan yang memerlukan kebenaran tersebut tidak akan bercanggah dengan mana-mana peruntukan rancangan pembangunana tersebut. Kebenaran perancangan tersebut boleh ditolak walaupun pembangunan di mana kebenaran telah dipohon tersebut tidak bercanggah dengan mana-mana peruntukan rancangan pembangunan tersebut. Dan

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- A di dalam kes ini, walaupun pembangunan di mana kebenaran telah dipohon tersebut tidak bercanggah dengan mana-mana peruntukan kepada rancangan struktur 1987 tersebut, kebenaran perancangan boleh ditolak dengan sah berdasarkan peruntukan-peruntukan tersebut di mana responden berfikirannya mungkin akan dibuat di dalam mana-mana pembangunan yang sedang disiapkan atau akan disiapkan, atau cadangan-cadangan berkaitan dengan cadangan-cadangan tersebut. Rancangan pembangunan tersebut sememangnya bukanlah hanya satu-satunya perkara yang perlu dipertimbangkan (lihat ms 141G-H, 142D-E).
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- C (3) Menurut s 21(3)(c) Akta tersebut, badan perancang tempatan di dalam suatu permohonan untuk kebenaran perancangan untuk mendirikan satu bangunan boleh memberi arahan-arahan tentang ketinggian bangunan yang dicadangkan tersebut (lihat ms 143H).]

D **Notes**

For cases on exercise of administrative powers, see 1 *Mallal's Digest* (4th Ed, 1998 Reissue) paras 1-67.

For cases on town planning, see 10 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 162-164.

E **Cases referred to**

An Advocate, Re [1964] MLJ 1 (refd)

Chin Choy & Ors v Collector of Stamp Duties [1979] 1 MLJ 69 (refd)

Creswell v BOC Ltd [1980] 3 All ER 443 (refd)

F *Hydraulic Engineering Co v McHaffie* (1878) 4 QBD 670 (refd)

Maunsell v Olins [1975] AC 373 (refd)

Ooi Ah Phua v Officer-in-Charge, Criminal Investigations Kedah/Perlis [1975] 1 MLJ 93 (refd)

Palaniappa Chettiar v Arunasalam Chettiar [1962] MLJ 143 (refd)

Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v Ong Gaik

G *Kee* [1983] 2 MLJ 35 (refd)

Tetuan Island View v Majlis Perbandaran Pulau Pinang LR/01/95 (unreported) (refd)

Tetuan Sri Bangunan Sdn Bhd v Majlis Perbandaran Pulau Pinang [1998] 2 AMR 1053 (refd)

H **Legislation referred to**

Local Government Act 1976

Municipal Ordinance of the Straits Settlement (Cap 133)

Street, Drainage and Building Act 1974

I Town and Country Planning Act 1976 ss 3, 4(4), (5), (6), 6(1)(a), (c), (2), 7(1), 8(1), 9(5), 10(1), (6), 11(1), 12(1), (2), (5), (6), 15(2), 16(1), 18(1), 19(1), 20, 21(1), (3), (4), (6), 22(1), (2), (3), (5)(i), 23(1), (2), (3) (a), (b), (c), (d), (e), (f), (g)

Balasundram a/l Kanagaretnam for the appellant.

Murgan a/l D Maniam for the respondent.

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Jeffrey Tan J (delivering judgment of the board): This is an appeal, made under s 23 of the Town and Country Planning Act 1976 ('the Act'), against the 'decision' of the local planning authority ('the respondent') in relation to the appellant's application for planning permission to erect a 12-storey building on Lots 797, 401, 402, 403, 404 and 405, Section 18, Georgetown ('the said lands').

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According to the grounds of appeal:

- (a) on 1 July 1996, the appellant submitted an application for planning permission to erect a 12-storey office building on the said lands located along Jalan Dr Lim Chwee Leong, Georgetown;
- (b) on 2 October 1996, the respondent imposed conditions and requirements (but all not specified in the grounds) to be fulfilled by the appellant;
- (c) on 25 October 1996, the appellant fulfilled those conditions and requirements imposed by the respondent;
- (d) on 18 February 1997, the respondent informed the appellant that their application for planning permission, pending new development guidelines to be issued by the Heritage Conservation Committee, was put 'on hold';
- (e) on 3 January 1997, the Heritage Conservation Committee directed the application for planning permission to be referred to a heritage consultant for the heritage consultant's comments;
- (f) the appellant was informed, subsequent to discussions with Lim Hoi Siang of Ar & T Heritage Consultancy Sdn Bhd to consider the reduction of the height of the proposed building, from 12 storeys to five storeys;
- (g) on 12 August 1997, 16 October 1997, 22 April 1998, the appellant informed the respondent of their intention to proceed with the erection of the proposed 12 storey; there was no reply from the respondent;
- (h) on 3 June 1998, the appellant met with the Pengarah Perancang Bandar, but still the respondent would not give a reply as to the status of the appellant's application for planning permission.

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The appellant contended, in the same said grounds of appeal, that the conduct of the respondent 'in refusing to make a decision and reply to the appellant ... tantamount to rejecting the appellant's application for planning permission'. Mr Balasundram, counsel for the appellant, echoed the same sentiment in his oral submission.

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But Mr Murgan, counsel for the respondent, saw it differently. He submitted, in his preliminary objection raised to dispose of this appeal, that there is no decision on the application for planning permission and there is therefore no appealable matter within the meaning of s 23(1) of the Act.

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A Sections 22(1) and 23(1) of the Act read as follows:

22 (1) As soon as possible after the receipt of an application for planning permission, or, if the application is one to which s 21(6) applies, as soon as possible after the expiry of the period within which objections may be made or, if objections have been made, as soon as possible after the objections have been dealt with under s 21(7), the local planning authority shall decide on the application for planning permission.

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23 (1) An appeal against the decision of the local planning authority made under s 22(3) may be made to the Appeal Board within one month from the date of the communication of such decision to him, by —

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- (a) an applicant for planning permission aggrieved by the decision of the local planning authority to refuse planning permission or by any condition imposed by the local planning authority in granting planning permission; and
- (b) a person who has lodged an objection pursuant to s 21(6) ...

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Clearly, a local planning authority is required by law, on the receipt of an application for planning permission, to decide on the application (s 22(1)). A local authority cannot not decide on an application. Indeed, s 22(1) enjoins a local planning authority not only to decide, but to decide 'as soon as possible', words which mean 'within a reasonable time, the shortest practicable' (*Hydraulic Engineering Co v McHaffie* (1878) 4 QBD 670 at p 673), 'as soon as may be' (*Ooi Ah Phua v Officer-in-Charge, Criminal Investigations Kedah/Perlis* [1975] 1 MLJ 93), but not as 'late as possible' (*Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v Ong Gaik Kee* [1983] 2 MLJ 35 at pp 37–38, per Salleh Abas CJ (Malaya) (as he then was). Consequently, a local planning authority must decide within reasonable time or without unreasonable delay having regard to all the circumstances of the case and the things to be done. It cannot 'sit' on an application, so to speak.

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There is another reason, perhaps the more important, for saying that a local planning authority cannot sit on an application. One of the purposes of the Act is to provide a right of an appeal to an applicant aggrieved by the decision of the local planning authority. The appeal board constituted under the Act is to hear appeals and 'review' the decisions of the local planning authority (see *Tetuan Island View v Majlis Perbandaran Pulau Pinang* LR/01/95(unreported)). And the appeal board, after hearing the appeal, may make any one of the orders specified in s 23(3) of the Act.

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That is, provided that there is an appeal (the Act only provides for an appeal made under s 23(1) of the Act) to the appeal board. Because the Appeal Board, without an appeal before it, has no jurisdiction to review the powers or exercise of powers conferred by the Act. But there could not, reasonably not, be an appeal before the appeal board if foremost there was no 'decision made under s 22(3) of the Act'. And so it should follow, should it, that a local planning authority by not deciding and/or by sitting on an application could deny an applicant who would not not be aggrieved by no decision of the right of an appeal to the appeal board. But then as said, a local planning authority must decide, and decide 'as soon as possible'. A

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local planning authority who fails to do so but contends nonetheless that there is no 'decision made under s 22(3) of the Act' is taking advantage of its own wrong, and is not to be heard. Obviously, what amounts to 'as soon as possible' varies from case to case. But two years, by any reckoning, is not a short period of time. Prima facie, the respondent had not complied with s 22(1) of the Act. Yet, the respondent would not explain why this application submitted on 1 July 1996 was not or could not be decided for two years. But still it was urged upon the board to construct s 23(1) in favour of the respondent who had not complied with the law.

In the interpretation of any written law, the first canon of construction — the literal rule — is to give the 'ordinary, plain and natural meaning' of the words contained in a statute (see *Creswell v BOC Ltd* [1980] 3 All ER 443). 'Applying the words and phrases of a statute in their ordinary meaning has been said to be the first and most elementary rule of construction and the second is said to be to construe the phrases and sentences according to the rule of grammar': *Chin Choy & Ors v Collector of Stamp Duties* [1979] 1 MLJ 69, per Chang Min Tat FJ. Yet, there will be a departure from the literal rule where 'the application of the words in their grammatical and ordinary sense would produce a result which is contrary to the purpose of the statute' (Cross, *Statutory Interpretation* (1987) p 47) or 'would produce a result repugnant to the other provisions of the Ordinance and defeat their purpose, including one of the principal purposes of the Ordinance' (*Re An Advocate* [1964] MLJ 1, per Wylie CJ). Words would then be read in any secondary meaning which they are capable of bearing, 'so as to obviate the injustice, absurdity, anomaly or contradiction or fulfill the purpose of the statute' (*Maunsell v Olins* [1975] AC 373 at p 391, per Lord Simon), with the help, if need be, of the aids to construction and presumptions in the law of statutory interpretation.

At any rate, s 23(1) cannot be read ad litteram and in isolation, for that would produce an absurd result.

Sections 21, 22 and 23 are found in Part IV, a comprehensive chapter on: (1) planning control — to realize a controlled and regulated development of land and buildings by requiring all development to be only undertaken with the prior planning permission of the local planning authority and by granting the local planning authority the powers to give such directions [s 21(3) (a–g)] and or to impose such conditions (s 22(5)) as the local planning authority thinks fit to impose or to refuse altogether an application for planning permission; and (2) the right of an appeal against a decision made under s 22(3).

In *Tetuan Sri Bangunan Sdn Bhd v Majlis Perbandaran Pulau Pinang* [1998] 2 AMR 1053, the local planning authority contended, also in a preliminary objection raised to dispose of the appeal, that directions made under s 21(3) was not a 'decision made under s 22(3)' and that the applicant without a 'decision made under s 22(3)' could not make that appeal. Disagreeing with the local planning authority, the appeal board said at pp 1062–1063:

- A** If Mr Murgan is right that an applicant cannot appeal against a direction made under s 21(3), then an applicant can be and will be forced, so to obtain any planning permission, to amend the plan submitted according to the directions of the local planning authority, or his application for planning permission without the submission of an amended plan according to the directions of the local planning authority shall be deemed withdrawn. And a local planning authority, if a direction given under s 21(3) is not a decision made under s 22(3), could even stall, frustrate, block and defeat an application at the stage of s 21(3) with impunity, without an application ever reaching the stage of s 22(3). The local planning authority could abrogate its legal duty to decide on an application for planning permission. A local planning authority would be the final arbiter whilst an applicant would be left without a recourse, an absurd unjust and inequitable result considering that an applicant cannot even appeal against a direction that is unreasonable, unlawful and/or beyond the ambit of the Act. And that absurd result would defeat the purpose of ss 23 and 36 providing a right of an appeal to an applicant aggrieved by the decision of the local planning authority. The presumption when constructing a statute against unjust and inequitable results would be thrown overboard. There would not be a proper balance between promoting the public interest for the sake of all individuals and upholding individual rights strictu sensu.
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Sadly, it appears that what the appeal board did voice is all so true. In *Sri Bangunan*, the local planning authority would not decide on the application but gave directions instead to circumvent the provisions of s 23(1) of the Act. And in the present case, it appears that the local planning authority would not decide on the application to deny the applicant of the right of an appeal.

- E** With respect, the provisions of s 23(2) cannot be circumvented by directions under s 21 or by indecision. A local planning authority must decide on an application for planning permission. A local planning authority may give written directions to an applicant, on the matters set out in s 21(3), to amend the plan submitted. An applicant may amend the plan submitted and resubmit the plan. If an amended plan is not resubmitted, s 21(5) provides that 'the application for planning permission shall be deemed to have been withdrawn but the applicant may submit a fresh application'. The Act is silent on an applicant who agrees not with the directions. The Act allows a fresh application. But that right of a fresh application to an applicant who agrees not with the directions and therefore could not be amending the plan submitted, is meaningless, as a fresh application with the same plan would encounter, in all probability, the same directions as the plan already submitted.
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- H** What is the remedy then to an applicant who agrees not with the directions? To amend is not an option. Yet if not amended and resubmitted, his application shall be deemed withdrawn. And if his application is deemed withdrawn, it means that there is no application for consideration and there could not be a decision made under s 22(3). An applicant could be compelled then, if a direction was not a decision, to give in to the directions of the local planning authority, or else his application would not reach the decision stage. And if an applicant should so give in, amending and resubmitting his application, so that it could move from the directions to the
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decision stage, he would still be unable, despite reaching the stage from which he could appeal, to reverse the directions no matter how unreasonable, as he would be held then, because he amended his application, to have accepted the directions. In any event, realistically, could he appeal? Reasonably, his resubmitted application with the amendments directed by the local planning authority would not be rejected, and there is no right of appeal if planning permission is granted without conditions. Unfortunately, that is the dismal scenario, if a direction is not a decision. An applicant could be denied a meaningful appeal as a result of the literal application of the word 'decision'. Worst, if the meaning of the word 'decision' is restricted to 'grant of planning permission with or without condition' or 'refusal of planning permission', an applicant would have no recourse if the local planning authority would not decide on the application. That, unquestionably, is not the intention of the Act. Rather, it is the intention of the Act that there is a speedy disposal of applications for planning permission and a right of an appeal to aggrieved applicants. The application of the words in the Act must produce that result. And that result would be produced only by construing the word 'decision' not only in the literal sense (grant or refusal of planning permission) but also in the wider sense (no decision on the application), so that a local planning authority could not not decide on an application, and also so that an applicant who would not not be aggrieved by no decision could appeal to the Appeal Board.

The respondent's preliminary objection, already quite plainly, cannot be allowed. The following principle stated by Lord Mansfield, in *Palaniappa Chettiar v Arunasalam Chettiar* [1962] MLJ 143 at p 146, makes it all the more inevitable that the preliminary objection of the respondent founded in the final analysis on the respondent's failure to comply with the law, should be (and it is) rejected:

No court will lend its aid to a man who founds his cause of action upon an immoral or illegal act.

On the appeal proper, which was received in the circumstances as an appeal against the refusal of planning permission, Mr Balasundram contended, the long and short of it, that the appellant having complied with all guidelines prevailing at the time of submission of the application must be granted planning permission to erect the said 12-storey building. His full arguments may be paraphrased as follows. Zone six, which encompasses the said land, only came about after the appellant had submitted the application. 'All zoning is illegal and contrary to the ... Act'. Zone six is a conceptual zone; it has not been approved by the state planning committee nor adopted by the respondent. Yet, the respondent would not approve the application, because of the guidelines applicable to Zone six. The interim zoning plan is the only legal plan, and the appellant has complied with all its requirements. Prangin Road is not identified as a conservation zone in the 1987 structure plan. Where is the power to limit the height of buildings?

Mr Murgan for the respondent responded as follows. Height is a matter within s 21(3) of the Act. A local planning authority is not restricted by

- A** development plans, but may take into consideration matters in any proposed development plan. A proposed development which contravenes a development plan must be rejected. It does not mean that a proposed development that complies with the development plans must be approved. 'The local planning authority must take current conditions and policies into account.' Because of the height of the proposed building, the respondent
- B** recommended no approval for the plan submitted.

- Mr Balasundram replied as follows. Planning permission cannot be on an ad hoc basis. Clear rules must be established. Planning permission was refused for the reasons set out in the respondent's letter of 10 June 1999. Without local plans, the respondent had no powers to designate the zones
- C** for conservation (Zone one to Zone six). The respondent must continue to use the interim zoning plan enacted under the Town Board Enactment (sic). The guidelines applicable to Zone six have not been adopted; yet those guidelines were used to reject the application. The Act recognises only two plans — the local plan and structure plan. All other plans are ultra vires the Act. Without local plans, the respondent had no powers to limit the
- D** height of the building.

- In short repartees, learned counsel also submitted as follows. Mr Murgan: The interim zoning plan was used as a guide. Even without a local plan, the respondent can control the height of buildings. Mr Balasundram: Section 21(3) presupposes the existence of a
- E** development plan. In the absence of a development plan, the interim zoning plan should be used, as has been the practice of the respondent. Mr Murgan: Section 22(2) provides for the event where there is no development plan. Mr Balasundram: Section 12(1) supports the contention that a local plan is proposed only when it is considered desirable. Mr Balasundram: The third draft guidelines allow buildings up to seven
- F** stories high. Prangin Mall is more than seven stories high. Mr Murgan: The third draft guidelines have not been accepted. Conservation is an objective in the 1987 structure plan. Prangin Mall is outside the conservation zone. Section 22(5)(i) empowers the respondent to impose the present condition.

- To settle those arguments, it is best to examine the relevant provisions of the Act. Three bodies control and regulate town and country planning in
- G** local authority areas in the state. The state authority is responsible for the general policy in respect of the development and use of all lands and buildings within the area of every local authority in the state. For the purpose of discharging that responsibility, the state authority may give directions of a general character to the state planning committee
- H** (committee) or local planning authority who shall give effect to the directions of the state authority — s 3.

- The Committee promotes in the state and advises the state government, on matters relating to the conservation, use, and development of land in the state — s 4(4). The committee may give directions not inconsistent with the provisions of the Act to the local planning authority
- I** who shall give effect to the directions of the committee — s 4(5). The committee may perform any other functions that are supplemental, incidental or consequential to any of the functions specified in s 4(4) and do

all such things as may be necessary or expedient for carrying out its functions under the Act — s 4(6). **A**

The local planning authority regulates, controls and plans the development and use of all lands and buildings within its area — s 6(1)(a) — and performs such other functions as the state authority or committee may from time to time assign to it — s 6(1)(c). The local planning authority may perform any other functions that are supplemental, incidental or consequential to any of the functions specified in s 6(1)(a) and do all such things as may be necessary or expedient for carrying out its functions under the Act — s 6(2). **B**

The local planning authority must (i) institute a survey of its area, examining the matters that may be expected to affect the development, or the planning of the development, and keep all such matters under review — s 7(1), and (ii) prepare and submit to the committee for its approval a draft structure plan s 8(1). The committee, if it is not satisfied that the purposes of s 9(1) have been adequately achieved by the steps taken by the local planning authority, shall return the draft structure plan to the local planning authority and direct it to take such further action as the committee may specify and resubmit the draft structure plan with such modifications as the local planning authority then considers appropriate. The committee shall not return the draft structure plan or give directions to the local planning authority if three months have elapsed since the local planning authority submitted the draft structure plan to the committee — s 9(5). The committee may approve a draft structure plan submitted or resubmitted either in whole or in part and with or without modifications or reservations, or reject it — s 10(1). Upon approving a draft structure plan, the committee shall submit it to the state authority for the assent of the state authority to the draft structure plan, and upon the assent being given, the draft structure plan shall come into effect — s 10(6). **C**
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That structure plan is not exactly unalterable. The local planning authority may submit to the committee and shall if so directed by the committee, submit to it proposals for such alterations to the structure plan as appear to the local planning authority to be expedient or as the committee may direct — s 11(1). **G**

The Act empowers the local planning authority, in the course of preparing a draft structure plan or before the committee approves or rejects a draft structure plan and even after a structure plan has come into effect, to prepare draft local plans for any part of the planning area, if it thinks it desirable — s 12(1) and (2). If an area is indicated as an action area in the structure plan, the local planning authority shall as soon as practicable after the structure plan comes into effect prepare a draft local plan for that area — s 12(5). The local planning authority shall, if the committee gives it a direction, prepare a draft local plan of such nature as may be specified in the direction — s 12(6). The local planning authority shall not adopt a draft local plan unless it conforms generally to the structure plan — s 15(2). The local planning authority may at any time make proposals for the alteration, repeal, or replacement of a local plan — s 16(1). **H**
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A Except where expressly excluded, the Act prohibits: (i) the use of any land or building otherwise than in conformity with the local plan — s 18(1), (ii) development without planning permission — s 19(1); and (iii) development otherwise than in conformity with the planning permission granted under s 22 in respect of the development or with the conditions of the planning permission — s 20.

B An application for planning permission is made to the local planning authority — s 21(1). Where the development involves the erection of a building, the local planning authority may give written directions to the applicant on any of the following matters, that is to say:

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- (a) the level of the building;
 - (b) the line of frontage with neighbouring buildings;
 - (c) the elevations of the building;
 - (d) the class, design, and appearance of the building;
 - (e) the setting back of the building to a building line;
- D**
- (f) access to the land on which the building is to be erected; and
 - (g) any other matter that the local planning authority considers necessary for the purpose of planning.

The local planning authority, in dealing with an application, shall take into consideration such matters as are in its opinion expedient or necessary for planning and in particular:

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- (a) the provisions of the development plan, if any;
 - (b) the provisions that it thinks are likely to be made in any development plan under preparation or to be prepared, or the proposals relating to those proposals;
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- (c)

And after taking into consideration the aforesaid matters, the local planning authority may grant planning permission either absolutely or subject to such conditions as it thinks fit to impose, or refuse to grant such planning permission — s 22(3). However, the local planning authority cannot grant

G planning permission if the development in respect of which permission is applied for would contravene any provision of the development plan — s 22(4).

H It is observed that the Act does not say that planning permission will be granted if the development in respect of which permission is applied for would not contravene any provision of the development plan. What the Act does say, however, is that the local planning authority, in dealing with an application, shall take into consideration such matters as are in its opinion expedient or necessary for planning, and in particular the provisions of the development plan, if any, and the provisions that it thinks are likely to be made in any development plan under preparation or to be prepared, or the

I proposals relating to those proposals. It translates, that the local planning authority, in dealing with an application, must consider not just the development plan, if any, but also provisions that it thinks are likely to be

made in any development plan under preparation or to be prepared, or the proposals relating to those proposals. It is also observed that the Act defines a development plan as 'the local plan', or, if there is no local plan, 'the structure plan'. There is no local plan in the present case, and the 1987 structure plan, in the event, is the development plan.

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It was submitted, that the appellant having complied with all guidelines prevailing at the time of submission of the application must be granted planning permission, that the respondent must continue to use the interim zoning plans enacted under the Town Board Enactment, and, that Zone six which came about after the submission of the application has not been approved by the state planning committee nor adopted by the respondent. With respect, that is just another way of saying that the respondent, in dealing with the appellant's application, shall take into consideration only the provisions of the development plan, if any, and not the provisions that it thinks are likely to be made in any development plan under preparation or to be prepared, or the proposals relating to those proposals, and that the respondent must grant planning permission if the development in respect of which permission is applied would not contravene any provision of the development plan. That, as observed, is not true. Planning permission could be refused, even if the development in respect of which development is applied for would not contravene any provision of the development plan. And in the instant case, even if the development in respect of which permission is applied would not contravene any provision of the 1987 structure plan, planning permission could be validly refused on account of the provisions that the respondent thinks are likely to be made in any development plan under preparation or to be prepared, or the proposals relating to those proposals. The development plan is definitely not the only matter to be taken into consideration.

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It is also not true that the respondent must continue to use the interim zoning plans enacted under the Town Boards Enactment. The Act provides that the respondent shall take into consideration the provisions that it thinks are likely to be made in any development plan under preparation or to be prepared, or the proposals relating to those proposals. The Act also provides that the respondent shall take into consideration such matters as are in its opinion expedient or necessary for planning. And zoning, which is 'the division of a city into districts and the description and application in each district of regulations having to do with structural and architectural designs of buildings and of regulations prescribing use to which buildings within designated districts may be put division of lands into zones, and within those zones, regulations of both the nature of land usage and the physical dimensions of uses including height setbacks and minimum area' (*Black's Law Dictionary* (6th Ed)), is undoubtedly a matter expedient or necessary for planning. Accordingly, the respondent shall take Zone Six and the proposed guidelines applicable thereto, even if not approved nor adopted, into consideration, if it thinks that Zone Six is likely to be a provision in any development plan under preparation or to be prepared. And of course, the respondent could only take Zone Six into consideration by not using, and or by not slavishly following the interim zoning plan approved under the

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A Municipal Ordinance of the Straits Settlement Cap 133 (since repealed by the Local Government Act 1976, and Street, Drainage and Building Act 1974). Anyway, strictly speaking, *sublato principali tollitur adjunctum*, the respondent need not take into consideration the interim zoning plan approved under a repealed Ordinance. That was acknowledged, more or less, by Mr Balasundram who said that the Act recognizes only the structure plan and local plan. If at all still relevant, that interim zoning plan, in the absence of a local plan, is used, as Mr Murgan pointed out, as a guide. It has no force of law. It may be taken into consideration, if it is in opinion of the respondent expedient or necessary for planning. But it is not for the appellant to say that the respondent must use that interim zoning plan.

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C What else did the appellant say? The appellant contended that without local plans the respondent had no powers to designate the zones for [heritage] conservation, and that all zoning is contrary to the Act. And the appellant oppugned the powers of the respondent to limit the height of buildings. It was not said, though, but it was apparent even whilst submissions were being delivered, that the quintessential question, despite so much said so intricately by the appellant on Zone Six, is whether the respondent has the power to limit the height of the proposed building. For if the respondent could limit the height of the proposed building, the fact that the respondent could not designate the said Zone Six, even so, would not invalidate the limit imposed on the height of the proposed building. On the other hand, if the respondent could not limit the height of the proposed building, the fact that the respondent could designate the said Zone Six would not validate the limit imposed on the height of the proposed building.

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F To repeat what has been said, pursuant to the provisions of s 21(3), 'where the development involves the erection of a building, the local planning authority may give written directions to the applicant on any of the following matters, that is to say:

- (a) the level of the building;
- (b) the line of frontage with neighbouring buildings;
- (c) the elevations of the building;
- G** (d) the class, design, and appearance of the building;
- (e) the setting back of the building to a building line;
- (f) access to the land on which the building is to be erected; and
- (g) any other matter that the local planning authority considers necessary for the purpose of planning.'

H That is to say, if it is still necessary given the unequivocal language of s 21(3)(c), that the local planning authority, in an application for planning permission to erect a building, may give directions on the height of the proposed building. Section 21(3)(c) alone settles that issue. In other words, in dealing with an application under s 22(2), and so as to take into consideration the matters specified in s 22(2), the respondent has all the power to set the height of a proposed building. Section 22(5)(i), which empowers the local planning authority when granting planning permission

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to impose conditions to ensure that the erection of a new building or the re-erection or extension of a building would be compatible with the architecture, character or appearance depicted in the buildings in the surrounding area which the local planning authority intends to protect, preserve or enhance, reinforces the construction that there is such power. And the local planning authority has such plenary power with or without a local plan (s 21(6)) or development plan (s 22(2)).

For all the reasons aforesaid, and by a unanimous decision, this appeal is dismissed.

Appeal dismissed.

Reported by Jafisah Jaafar

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